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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/539,107	03/30/2000	Edward A. Hubbard	Bay 3 : 008	7866
29444	7590	05/20/2004	EXAMINER	
			JEAN, FRANTZ B	
KELLY KORDZIK WINSTEAD SECHREST & MINICK P.C. 5400 RENAISSANCE TOWER DALLAS, TX 75270			ART UNIT	PAPER NUMBER
			2151	15
DATE MAILED: 05/20/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

PPL

Office Action Summary	Application No.	Applicant(s)	
	09/539,107	HUBBARD, EDWARD A.	
	Examiner	Art Unit	
	Frantz B. Jean	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 February 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 25-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 25-34 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

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This office action is in response to the amendment filed on 2/25/2004. Claims 1-24 have been canceled. New claims 25-34 are added.

The amendment filed on 2/25/2004 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 25-34 are rejected under 35 U.S.C. 102(e) as being anticipated by

Guheen et al. ("Guheen") US patent Number 6,615,166.

As per claims 25 and 33-34, Guheen teaches prioritizing components of a network framework that includes a method operating a distributed processing system having a network coupling a multiplicity of Host distributed devices for processing workloads for the distributed processing system, a plurality of Client systems requesting processing of the workloads, and a Server system for selectively distributing the workloads from the plurality of Client systems for processing by the distributed processing system comprising the steps of: receiving in the Server system a request to store first back-up data from a first Client system, the first back-up data having associated storage priority data (col. 96 lines 12 et seq; col. 162 lines 59 et seq; see abstract); searching a database identifying excess storage capacity coupled to one or more of the multiplicity of Host distributed devices in response to the associated storage priority data and selecting candidate Host distributed devices for storing the first back-up data (col. 93 lines 5 et seq; col. 143 lines 11 et seq; col. 138 line 60 to col. 139 line 2); sending the first back-up data to one or more of the candidate Host distributed devices with retention data indicating conditions for retaining or deleting the first back-up data (retention and deletion of data are inherent in Guheen by considering space availability col. 143 lines 17 et seq; see fig 1); and updating an index in the Server system with address data for accessing the one or more candidate Host distributed devices receiving the first back-up data (col. 262 lines 5 et seq).

As per claim 26, Guheen teaches the method of claim 25 that further comprising the step of: updating the storage priority data of the first back-up data

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stored at the one or more candidate Host distributed devices (see abstract; col. 143 and 144).

As per claim 27, Guheen teaches the method of claim 25 that further comprising the steps of: receiving the first back-up data from the first Client system; partitioning the first back-up data into N partitions in response to the storage priority data corresponding to the first back-up data; identifying M candidate Host distributed devices from the multiplicity of Host distributed devices for storing the partitions; and sending the N partitions to N storage locations within the M candidate Host distributed devices (see fig 1; col. 138 line 60 to col. 139 line 2; col. 142 lines 42 et seq col. 143 lines 51 et seq; see summary of invention).

As per claim 28, Guheen teaches the method of claim 27 that further comprising the step of updating an index in the Server system identifying the N storage locations for recovering the N partitions of the first back-up data (col. 262 lines 5 et seq; abstract).

As per claim 29, Guheen teaches the method of claim 25, wherein the storage priority data determines a retention time for the first back-up data, a speed required for recovering the first back-up data, and a level of redundancy needed for the first back-up data (col. 141, lines 1 et seq).

As per claim 30, Guheen teaches the method of claim 29, wherein the retention time, recovery speed and redundancy level are used to determine a number P of storage locations required for storing the first back-up data and to determine which particular ones of the Host distributed devices are chosen as the P storage locations to store the first back-up data (col. 144 lines 33 et seq).

As per claim 31, Guheen teaches the method of claim 25, wherein one of the multiplicity of Host distributed devices requests a back-up of data as a Client system (col. 96 lines 12 et seq).

As per claim 32, an incentive for a first Host distributed device coupled to the network to process workloads for the distributed processing system that comprises an authorization for the first Host distributed device to back-up data on the distributed processing system with corresponding first storage priority data is inherent in Guheen (see abstract).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz B. Jean whose telephone number is 703 305 3970. The examiner can normally be reached on 8:30-6:00 M-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton B. Burgess can be reached on 703 305-4792. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frantz Jean



FRANTZ B. JEAN
PRIMARY EXAMINER